

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO. 255 OF 1988

Pralhad Krishnat Patil & anr. Appellants
(Org. Accused
Nos. 1 & 2)

Vs.

The State of Maharashtra Respondent

Mr. T. E. Mane for appellants.
Ms. V. R. Bhosale, APP for Respondent-State.

WITH

CRIMINAL APPEAL NO. 531 OF 1988

The State of Maharashtra Appellant

Vs.

Pralhad Krishnat Patil & 10 ors. Respondents
(Org. Accused
Nos. 1 to 11)

Ms. V. R. Bhosale, APP for Appellant-State.
Mr. T. E. Mane for Respondent Nos. 1 to 9 and 11.

CORAM: S. S. PARKAR &
SMT. RANJANA DESAI, JJ.

August 03 & 04, 2004.

ORAL JUDGMENT (PER S. S. PARKAR, J.)

1. These two appeals have been filed by
the
convicted accused and the State against the judgment
and
order dated 15th March 1988 delivered by the
Addl.
Sessions Judge, Solapur convicting and sentencing

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accused nos.1 and 2 for offence under Sections 304

II and 341 both read with Section 34 of IPC

acquitting the rest of the accused i.e. accused nos.3

11 of all the offences in Sessions Case No.108 of

Since both these appeals arise from the same judgment

Sessions Case No.108 of 1987, these appeals were

together and are being disposed of by this

judgment.

2. The prosecution case briefly stated is
follows:

The incident of assault took place on
March 1987 at about 6-30 p.m. in village Mirzanpur
Taluka Barshi, Dist. Solapur in which one Bharat
Late died. It seems there was some political rivalry
the village due to grampanchayat elections and
complaints were also lodged against accused no.1 by
villagers including the deceased and the witnesses
respect of fair price shop which was being run

District accused no.1. On the complaint lodged with the
taken Supply Officer by some persons in which lead was
no.1 by deceased Bharat the licence issued to accused
and for running the fair price shop was suspended
on thereafter he had obtained stay from the Government
had the suspension order. The deceased and others
the objected to the stay granted by the Government on
in suspension of the licence issued to accused no.1
respect of the fair price shop.

mechanic 3. PW 8 Bhujang Sangale was working as
Mirzanpur at Tuljapur. He used to go to Tuljapur from
cycle. and come back after his work on his moped motor
Sangale On the date of the incident Bharat Late met PW 8
8 near Tuljapur ST stand. At the request of Bharat PW
reached gave him lift on his motor cycle. They
primary Mirzanpur village by about 5-30 p.m. near the
learning school building. His sister Kamal PW 15, after
went that accused persons had gathered to beat PW 8,

accused running near the school and sounded him that the
time were waiting for him and there was danger. At that
went accused persons armed with iron bars and sticks
dealt near the motor cycle of PW 8. Accused no.2 Kisan
PW a blow with hunter in his hand on the back of PW 8.
also 8 asked Bharat to get down and run away. PW 8
the started running towards Tuljapur side. Some of
beating accused tried to chase PW 8. Others started
head Bharat. Accused No.1 had assaulted Bharat on his
is with iron bar as a result of which he fell down. It
in alleged that others also assaulted him with sticks
was their hands. Bharat became unconscious. Bharat
civil taken in a ST bus by some of the witnesses to the
after dispensary in Tuljapur. In the civil dispensary,
asked giving some treatment to Bharat the witnesses were
then by the doctor to take him to Solapur. Bharat was
they taken in a matador to Civil Hospital, Solapur where
PW reached about 11-30 p.m. In the following morning

6 Sajjanrao Late, who was one of the eye witnesses to the incident and had taken Bharat along with others first to Tuljapur civil dispensary and thereafter Civil Hospital, Solapur gave his written complaint to the Dy. Superintendent of Police Jadhav in which all accused were named. That complaint is produced at Exhibit 41 which is dated 7th March 1987. The crime was registered initially, inter alia, for offence under Section 307 of IPC and the investigation commenced. A constable was deputed to the place of incident on the same day and the statements of some of the witnesses were recorded on 7th March 1987 and of others on 8th March 1987. Bharat, who had become unconscious at the place of incident, died in the hospital in the morning of 9th March 1987. Therefore the crime was registered for offence under Section 302 and for offences of unlawful assembly etc. After completion of the investigation charge-sheet was filed in the Court of JMFC, Barshi against 11 accused persons and the case

was

committed to the Sessions Court at Solapur.

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offences

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Act.

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4. On 21st November 1987 the trial Court charges against all the 11 accused persons for under sections 147, 148, 302 read with section 149 the alternative read with section 34 of IPC and offences under section 341 read with section 149 of and under section 323 read with section 149 in alternative read with section 34 of IPC and for under sections 37(1) and 135 of the Bombay Police Act. All the accused pleaded not guilty to the charges against them.

witnesses

witnesses

PW

has

8

deceased

5. On behalf of the prosecution 23 have been examined. There are about six eye to the incident being PW Nos.6, 7, 8, 13, 14 and 15. 6 is Sajjanrao Late who was an eye witness and lodged the complaint. PW 7 Padmini is the wife of PW Bhujang Sangale who had given lift to the

accused Bharat on his motor cycle and was assaulted by
Prabhakar no.2. PW 13 is Namdev Sonawane. PW 14 is
Kamal Late who is uncle of deceased Bharat and PW 15 is
map Gajare, sister of PW 8. PW 1 Kulkarni had drawn the
examined of the place of offence. PW 2 Dr.Karande had
Dr.Prakash Bharat in Civil Hospital, Solapur. PW 5
dispensary Patil had examined deceased Bharat in civil
on at Tuljapur. PW 12 Dr.Sardar had performed autopsy
The the dead body and issued the death certificate.
The other witnesses are panchas and police officers.

and case was investigated by PW 18 PSI Daulatrao Jadhav
Jadhav, PW 21 P.S.I. Kashinath Konnure. PW 17 is Vijay
by Dy. S.P. to whom written complaint was handed over
was the complainant on the basis of which the crime
registered.

total 6. The defence of the accused was of

a denial and false implication. Accused no.1 has filed
that written statement (Exh.3) in which he has mentioned
false there were two parties in the village and that
to complaint was lodged against the accused persons due
evidence previous enmity. After considering the entire
11 on record the trial Court acquitted accused nos.3 to
the of all the offences with which they were charged by
convicted impugned judgment. The trial Court however,
304 accused nos.1 and 2 for the offence under Section
them Part II read with Section 34 of IPC and sentenced
in to RI for 7 years and to pay a fine of Rs.3000/-
also default R.I. for 1 and 1/2 years. They were
with convicted for offence under Section 341 read
months section 34 of IPC and sentenced to RI for three
one and to pay a fine of Rs.250/- in default R.I. for
run month. The substantive sentences were directed to
concurrently.

7. Aggrieved by the said decision accused
nos.1

the and 2 filed Criminal Appeal No.255 of 1988 against
them order of conviction and sentence recorded against
filed by the trial Court. The State on the other hand
of Criminal Appeal No.531 of 1988 against the order
Section acquittal of all the accused for offence under
other 302 of IPC as well as acquittal in respect of
is offences. Thus the order of the trial Court
convicted challenged by both, the State as well as the
concerned, accused. So far as accused nos.2 and 10 are
Appeal they are reported dead and, therefore, Criminal
original Nos.255 and 531, both of 1988 abate as regards
Mohan accused no.2- Kisan Rama Jadhavar. Accused no.10-
Criminal Laxman Jadhavar who is respondent No.10 in
died Appeal No.531 of 1988 filed by the State had also
as and, therefore, appeal against him had already abated
26/2/1991. recorded by the order of this Court dated
Criminal Thus we are concerned with accused no.1 in
11 Appeal No.255 of 1988 and accused nos.1, 3 to 9 and
in Criminal Appeal No.531 of 1988.

the 8. We have gone through the evidence of
the prosecution witnesses with the assistance of
Mr.Mane Advocate and have heard both sides at length.
that appearing for all the accused persons contended
offences accused no.1 is entitled to be acquitted of the
in for which he was convicted and the order of acquittal
On respect of all the accused deserves to be confirmed.
all the other hand the learned APP seeks conviction of
were the accused for all the offences with which they
302 charged including offence of murder under section
that read with section 149 of IPC. Mr.Mane contended
the there was delay in lodging FIR and in recording
FIR statements of the eye witnesses. He argued that the
also was lodged very late and was concocted. He
the contended that false case has been lodged because of
the previous enmity between the parties as mentioned in
lastly written statement filed by accused no.1. He
contended that in any case there was no intention

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murder and, therefore, the accused cannot be

for offence of murder but for lesser offence. On

other hand Ms.Bhosale contended that by application

section 149 of IPC all the accused are guilty of

of murder for the fatal assault made by accused no.1

deceased Bharat. Alternatively she contended that

any way accused no.1 was liable to be convicted

offence of murder under section 302 of IPC.

nos.3

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accused

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9. The trial Court has acquitted accused

to 11 on the ground that the accused had no intention

kill deceased Bharat but they had assembled only to

beating to Bharat and since the common object of

assembly was not to kill Bharat the other accused

be convicted for the assault made on Bharat by

no.1. Because of some discrepancies and omissions

has not believed the witnesses when they deposed

all the accused had assaulted the deceased. One of

reasons given by him to disbelieve assault by all

the

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kill

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not

eleven accused is that the deceased had not received

many injuries which can be said to be an act of

accused persons. The reason given for acquittal

accused nos.1 and 2 for the offence of murder is

accused no.1 cannot be said to have intended to

Bharat but he can only be attributed the knowledge

therefore, was liable to be convicted for offence

culpable homicide not amounting to murder. That is

the trial Court has convicted the accused nos.1 and

for offence punishable under section 304 Part II and

under section 302 of IPC.

of

6

7th

accused

He

the

10. Six persons have been examined on behalf

the prosecution as eye witnesses to the incident. PW

Sajjanrao Late has lodged complaint (Exh.41) on

March 1987 in which he has named all the 11

persons. He was also eye witness to the incident.

has deposed about the relationship between some of

accused inter se and stated that accused no.11

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Mirzanpur

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Chavan was the Sarpanch of Mirzanpur. Accused nos.1

4 are brothers, accused nos.9 and 10 are brothers

accused no.2 was the cousin of accused nos.9 and

Accused no.8 is the uncle of accused no.3. Accused

was Police Patil of Mirzanpur at the relevant

Accused no.1 was running a fair price shop in

since previous five to six years. There were

filed by the villagers against him as they were

getting proper supply of grains from his shop.

of the complaints given to the superior officer

licence was suspended and thereafter he obtained stay

the suspension order. The incident had taken place

6th March 1987 when PW 6 complainant was sitting

Maruti temple along with other witnesses

chitchatting there. He saw the accused beating

Late near the tomb. Accused no.1 was beating

with an iron bar in his hand and accused no.2 with

hunter. He has also named other accused who

some beating Bharat with either stick or iron bar and
that were pelting stones. He heard accused no.1 saying
Bharat was filing cases against him regarding his
shop and, therefore, he should be beaten. Bharat
fell down because of the assault on him. At that time
moped motor cycle of Bhujang Sangale was lying
there.
Bharat. Complainant requested the accused not to beat
injured He thereafter, along with other persons, took
on Bharat to Tuljapur civil dispensary and thereafter
Hospital, the advice of doctor took Bharat to Civil
to Solapur. Next day morning he gave written complaint
his Dy.S.P. Jadhav. There is corroboration to
deposition from his complaint (Exh.41).

by 11. Complainant's evidence is also supported
had PW 7 Padmini who is wife of PW 8 Bhujang Sangale who
stated given lift to Bharat on his motor cycle. She had
she that as she saw motor cycle of her husband there
therefore, thought that her husband had fallen down and,

body. she tried to protect him by falling on his

the According to her she also received stick blows from

were accused persons as a result of which her bangles

incident. broken and pieces thereof fell at the place of

who Then there is evidence of PW 8 Bhujang Sangale

the deposed about the villagers having complained to

was District Supply Officer against accused no.1 which

was signed by him also and, therefore, his licence

the suspended. Thereafter he obtained stay on

fair suspension order and again began to conduct his

came price shop. He deposed that his sister Kamal PW 15

that near the school running from her house and told him

his there was danger ahead and, therefore, he stopped

there motor cycle but in the mean time accused reached

with and started assaulting him. He was assaulted

towards hunter by accused no.2 and thereafter he ran

fear. Tuljapur side and did not return that night out of

others He saw some of the accused were chasing him while

has
him
were seen by him assaulting deceased Bharat. He
deposed that accused nos.9, 10 and 11 were chasing

while other accused started assaulting Bharat.

Namdev
against

12. Then there is evidence of PW 13

Bhujang

Sonawane who also deposed about complaint lodged

when

accused no.1 by the villagers. He saw PW 8

of

Sangale and deceased Bharat coming on moped and

persons

they reached near the tomb PW 15 Kamal, sister

Bharat.

Bhujang, came there and thereafter accused

persons

stopped Bhujang and then they started assaulting

Bhujang

He also deposed about some of the accused

iron

chasing Bhujang and that accused no.2 assaulted

to

with hunter. He deposed about accused no.1 having

on

bar in his hand and instigating others by asking them

He

catch Bharat and giving two blows with iron bar

take

Bharat's head and Bharat urging him not to beat him.

from

had also accompanied complainant Sajjanrao to

Bharat to Tuljapur and thereafter others took him

also Tuljapur to Civil Hospital at Solapur. There is
evidence of Prabhakar Late, uncle of Bharat. He
seems to have gone to the place of incident after hearing
the noise. When he reached there Bharat was lying down
in injured condition. He is one of the persons who
had taken injured Bharat to Tuljapur. He is the uncle
of Bharat. Last eye witness is PW 15 Kamal Gajare who
is sister of PW 8 Bhujang. She was told by Bhujang's
son Pintu that about 11 persons had gathered near the
school building and Kisan and Rama had enquired from him
when his father would be returning and that accused no.2
was saying that they would beat Bhujang on that
day. Hearing that witness ran towards the school
building along with Pintu. When her brother Bhujang came
on motor cycle from Tuljapur, she told him not to go
ahead as people had gathered to beat him. However, in
the mean time accused reached there and started
chasing Bhujang and beating Bharat. She has deposed
that accused no.1 dealt blow with iron bar on the head

of

was

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Bharat. She has further deposed that accused no.1 asking others to beat Bharat and not to leave him that Bharat was complaining against his ration shop therefore, he should not go back alive.

incident.

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13. Thus there are eye witnesses to the

At least four of the six aforesaid witnesses clearly witnessed the incident of assault from inception and they have deposed about accused assaulting deceased Bharat on head with iron bar.

Accused no.1 was heard saying that Bharat had against his running ration shop and, therefore, should not be left alive. The witnesses have also about the motive. PW 14 Prabhakar Late, uncle Bhujang has deposed that Bharat had taken lead complaining against the shop of accused no.1. May be the other accused persons may have come to the aid accused no.1 at that time because of the political rivalry but it was mainly accused no.1

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Thus

Bharat

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role

wanted to assault Bhujang and Bharat because of complaints lodged against his ration shop as a result of which his licence was suspended. At the time incident he had said that Bharat was complaining him and, therefore, not to leave him. It was he who dealt blows with iron rod on the head of Bharat. Thus the motive of accused no.1 in assaulting deceased Bharat and the evidence of the eye witnesses that it was accused no.1 who assaulted Bharat with iron rod on head does not leave any manner of doubt about the role played by accused no.1.

prosecution

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noticed

14. The medical evidence led by the shows that it was the assault on the head of deceased that was the cause of death of Bharat. To begin with PW 5 Dr.Patil who had examined Bharat in Civil Dispensary at Tuljapur at 8 p.m. on 6th March 1987 has deposed that following seven injuries were noticed on the person of Bharat:

- x (1) C.L.W. right temporal parietal region 2"
1".
- x (2) Abraded contusion 2" x on right forearm 2"
1".
- region (3) Abraded contusion left lumbar
(horizontal) 6" x 1".
- size (4) Contusion right scapula medial
(horizontal) 4" x 1".
- x (5) Abrasion verticle right lumbar region 6"
1/4".
- x (6) Abrasion right thigh ant. 1" x 1".
- (7) Abrasion left thigh anteribal middle 1/2"
1/4".

object Those injuries were caused by hard and blunt
iron within six hours and could be caused with stick,
Hospital, bar etc. He had referred the patient to Civil
Solapur.

was 15. In Civil Hospital, Solapur Bharat
the examined by Dr.Karande PW 2. He had examined
incident. patient at about 11-40 p.m. on the date of
conscious According to him the patient was in semi

condition when he was brought to the hospital and he
was
serious. He found eight injuries on his
person.
According to him out of the eight injuries mentioned
by
him injury nos.5 and 6 could be caused by hard and
blunt
object. He has deposed that there were blood clots
in
the brain and the clotting of blood was due to
injury
nos.5 and 6 which were sufficient in the ordinary
course
of nature to cause the death as there was
internal
bleeding and clotting of blood. There was also
fracture
of left ulna. Injury nos.5 and 6 as per his report
are
as follows:

(5)CLW over right parietal region 2 1/2" x
2"
scalp deep bleeding present.

(6) Haematoma over occipital region 1/2"
in
diameter.

This doctor has deposed that haematoma could not be
due
to any other reason except the injury nos.5 and 6.
He
has further deposed that injury nos.5 and 6 could
be
caused by iron bar or stick like article nos.16 and

has shown to him. Thus the evidence of eye witnesses
evidence. been sufficiently corroborated by the medical
Bharat None of the witnesses have attributed assault on
The on his head except by accused no.1 with iron bar.
cause injuries received by Bharat on his head were the
motive. of his death. The prosecution has proved the
had As per the deposition of P.W.14 it was Bharat who
no.1 taken leading part in complaining against accused
supplying as regards his irregularities or for not
words proper food grains through his ration shop. The
go uttered by accused no.1 at the time of assaulting him
against clearly to show that he had animus or motive
against Bharat because of the complaints lodged by him
leave accused no.1 and, therefore, he did not want to
Bharat alive at that place.

PW 16. There is also evidence of another doctor
He 12 Dr.Sardar who performed autopsy on the dead body.
on had mentioned following six injuries noticed by him

due the dead body. According to him cause of death was
subdural to shock and hemorrhage due to extradural and
haematoma compressing the brain.

parital (1) Burrhole sutured wound on both temporo
inch, region, Right Burrhole sutured wound 5
left burrhole 3 inch sutured wound.
(2) Contusion occipital region 1/2 inch.
(3) Abrasion on right thigh 1" black coloured.
(4) Abrasion on right illoc fossa 2 inch.
(5) Abrasion on right scapula region 1" x 1/2".
(6) Fracture of left ulna middle 1/3.

on Thus according to this doctor Bharat had wounds
was temporal as well as occipital region and there
also contusion on occipital region 1/2 inch. There was
found fracture of left ulna middle 1/3. He also
following injuries on internal examination:

parital (1) Hamatoma under scalp on both temporo
and occipital region
haematoma Brain:- Extra dural and sub dural
on both tempo parital and occipital region.

to According to him internal injuries were corresponding

injury external injury nos.1 and 2. In his opinion
sufficient nos.1 and 2 along with internal injuries were
of in the ordinary course of nature to cause the death
Bharat.

17. Thus the injury caused by accused no.1
was sufficient in the ordinary course of nature to
cause death of Bharat. There is evidence of eye witnesses
not one but at least four eye witnesses to the assault
on the deceased and the other two witnesses having
seen accused no.1 at the place of incident who had reached
at the spot immediately after Bharat had fallen down due
to the head injury caused to him. The evidence of
eye witnesses is corroborated by the medical evidence
as well as FIR lodged by PW 6 and there is evidence
of motive led by the prosecution. The argument
that because of the previous enmity and the political
rivalry the witnesses had filed false complaint against all
the accused is difficult to believe. On the contrary
the

complaints against the Ration shop of accused no.1
which seem to have mainly motivated him to assault
Bharat constitutes motive for the aforesaid offence.
The criticism made by the defence Advocate about the
late filing of FIR and that the real FIR must have
been replaced by Exhibit 41 is absolutely without
any substance and foundation. The argument that on the
date of the incident the police constable had gone to
the place of incident yet no complaint was lodged with
him is also devoid of any substance. When the main male
eye witnesses had taken the injured person to the
hospital in the same night initially in ST bus traveling 13
Kms. to Tuljapur and from there in a matador to
Solapur hospital, the complaint could not have been
lodged earlier than the following morning. The witnesses
who were relations of injured Bharat were concerned
for taking him to the hospital for securing him medical
aid first. They were not expected to rush to the
police station for lodging complaint first when the injured

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in serious condition. That was the next thing to
done in such cases where the injured had
unconscious and would have breathed his last
moment. In those circumstances when the main
were with the injured in the hospital no person in
village was expected to go forward and lodge
with the constable who was deputed to the village
general enquiry.

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Therefore,

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18. PW 6 has lodged his written complaint
details to the Dy.S.P. who thereafter instructed
subordinates to take action in the matter. Dy.S.P.
not the person who normally takes down the complaint
prepares the proforma FIR and registers it.
the written complaint given to Dy.S.P. was forwarded
his subordinates for taking action in the matter
when that complaint was lodged on the following
and the incident had taken place in the previous
it cannot be said that there was delay in lodging

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no.1

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FIR. Similarly the argument that the prosecution not brought on record the complaints made by Bharat PW 8 in respect of the Ration shop of accused no.1 without any substance in view of the evidence led by prosecution witnesses attributing words to accused at the time of incident that Bharat had lodged against his ration shop. There is no denial that such complaint was lodged. The argument then is that the signatures of PW 8 and Bharat are not to have been made on such complaints. That falsify the prosecution case when it is not disputed the written statement (Exh.3) that their names mentioned in the complaint made to Rationing authority.

no

incident

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19. The defence Advocate also contended that one informed the police at Tuljapur about the though the police van was there near the dispensary. When the patient was serious unconscious the relatives who had taken the patient

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Constable

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the hospital were concerned with securing him aid first and save his life than to go and complaint with the police first. From Tuljapur they to take the patient to Solapur civil hospital as per advice of the doctor at the medical dispensary deposed to by PW 5. Similarly PW 22 Head Shinde attached to Vairag police station who had gone Mirzanpur village on 7th March 1987 after making in the station diary has deposed that when he enquiry about the relatives of the injured person learnt that all the relatives of the injured had gone Solapur. Thereafter he gave report to the station at about 4 p.m. on that day which is Exhibit 70. When the main relatives had accompanied the patient Solapur the lady members remaining in the village not expected to lodge their complaint nor the constable was deputed there for that purpose.

20. Much has been commented about the

deposition

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of the witnesses when they stated that PW 7 Padmini
fallen on the body of Bharat to protect him which was
omission in the police statements of the witnesses.
be at the time of recording statements none of
witnesses might have felt that aspect to be so
which needed to be stated before the police. That
not however falsify the presence of Padmini at the
of incident. According to her own deposition she
gone there when Bharat had fallen down and thinking
it must be her husband because his motor bike was
there, she fell on his body to shield him from
assault. Even Bharat was her relation. But the
remains that she has deposed without any omission
because of her falling on the body of the injured
bangles were broken which were attached under the
panchanama from the place of incident and broken
of the bangles tallied with her remaining bangles.

21. The evidence of the prosecution as

discussed

no.1

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above leaves no manner of doubt about the accused having assaulted deceased Bharat on his head with iron bar. There was recovery of iron bar at instance which was found to be stained with human as per CA report (Exh.79). Though the recovery was supported by panch PW 10, it is proved by Investigating Officer PW 21 PSI Konnure whose cannot be said to be unreliable for any reason. question, therefore, is whether the prosecution proved the charges framed against the other persons.

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22. Apart from the specific assault attributed accused nos.1 and 2 by the prosecution witnesses witnesses have generally deposed about the presence the other accused persons and they having insulted deceased and assaulted him. Some of the accused chased PW 8 Bhujang who escaped by running away Tuljapur. According to P.W. 8 accused no.2

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initially assaulted him on his back with his hunter

no injury was found on his person to support

evidence. No witness has specifically named any

accused for having assaulted deceased Bharat. In

view the trial Court had rightly observed that all

accused had not formed common object to commit

murder of Bharat. They were waiting for the arrival

PW 8 Bhujang Sangale. The main assault on the head

Bharat was attributed specifically by the witnesses

accused no.1 who had also uttered the words that

should not be left alive as he had complained

his ration shop. The trial Court has given benefit

doubt to other accused persons and acquitted

No doubt they were present there but there is

evidence of the common object which could be said

have been shared by accused nos.3 to 11 and in

absence of specific assault attributed to any of them

would not be possible to interfere with the view

acquittal. by the trial Court in this appeal against
rest The view taken by the trial Court in respect of the
view of the accused cannot be said to be a perverse
against which would warrant interference in the appeal
common acquittal. That cannot be possible when the
been object or common intention is not proved to have
had shared by the other accused. The trial Court
and, attributed common intention only to accused no.2
of therefore, he was convicted by virtue of section 34
him IPC along with accused no.1. But the appeal against
role having abated we are not required to consider his
in the incident.

requires 23. The last question which
the consideration is whether accused no.1 has committed
or offence of murder punishable under section 302 of IPC
IPC. culpable homicide punishable under section 304 of
said The learned Addl. Sessions Judge dealing with the
has point, after considering the medical evidence,

observed in para 55 of the judgment as follows:

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"... The blows with the iron bar produced in
were dealt on the head of Bharat and even if it
accepted that the intention to commit murder
not positively proved, the accused who, in
assaulted Bharat cannot claim that they had
knowledge that the injury inflicted on the
was likely to cause death. They were acting
furtherance of common intention of beating
causing injuries to Bharat which intention
exist since the time they had gathered there
since the time they saw Bharat and Bhujang
on moped and, therefore, the offence
would fall under Part II of section 304 read
section 34 of the Indian Penal Code and not

Section 302 of the Indian Penal Code."

In our view the trial Judge had clearly committed

error in holding that the offence would fall under

II of Section 304 and not under section 302 of IPC.

view taken by the trial Court does not appear to be

consonance with the provisions of Sections 299 to 304

the Penal Code. It would be, therefore, desirable

consider the provisions of the Code relating to

which homicide in some detail to remove the cobweb
and surrounds the subject due to the misunderstanding
the misapprehension of the scheme of the Code as regards
offence of murder and culpable homicide.

24. The applicability of the provisions
of section 304 does not depend on whether the act
causing death is done with the knowledge that it is likely
to cause death or the person committing the act knows
that such bodily injury is likely to cause death. If
such view is taken one cannot explain why the first part
of section 304 refers to the act done with the intention
of causing death or with intention of causing such
bodily injury as is likely to cause death. The
determining factor for applicability of section 302 or section
304 of IPC is whether culpable homicide amounts to murder
or does not amount to murder. Whether culpable homicide
is murder or not is defined in section 300 of IPC
itself.
when The main four clauses of section 300 define

culpable homicide is murder. If the act of the offender falls in any one of the four clauses of section 300 the act of the offender is murder and, therefore, punishable under section 302 of IPC. The act ceases to be punishable under section 302 only when the act, though falling under any one of the four main clauses of section 300, also attracts, or falls under, any one of the five exceptions enumerated in section 300 of IPC. In both cases such act is culpable homicide in the sense that it is homicide which is punishable and not exempted from punishment under any of the general exceptions provided under Chapter IV of IPC. The phrase culpable homicide is, therefore, used to distinguish it from homicidal deaths which are not culpable i.e. not punishable by virtue of being exempted under the General Exceptions enumerated under Chapter IV of the Code. For example the death caused due to pure accident is not punishable. Similarly homicidal death committed by a child under 7 years of age is totally exempted

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punishment and, therefore, it is not a
homicide. If murder is committed by child above 7
of age but under 12 years, who has not
sufficient maturity of understanding to judge the
and consequences of his conduct on that occasion,
also exempted from punishment under section 83
certain circumstances. The code also exempts
punishment under Section 84 the murder committed by
person who by reason of unsoundness of mind is
of knowing the nature of the act committed by him.

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25. It would, therefore, be equally wrong to
that if the offence falls under section 299 of the
which defines culpable homicide in general, it would
punishable under section 304 of the Code. Section
of the Code defines in general culpable homicide
contra-distinction to the homicidal death which is
punishable under the Code by virtue of falling under
of the General Exceptions enumerated in Chapter

IV

opening thereof. This is also clear from the following words of section 299 which defines culpable homicide to mean and include, "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death". (Emphasis supplied) It is only section 300 of the Code which makes a distinction, not between culpable homicide and murder as such, but between culpable homicide which amounts to murder and which does not amount to murder for the purpose of punishment only. It is significant to note that both sections, Section 299 as well as Section 300, refer to intention as well as knowledge. Similarly Section 304 also refers to the commission of murder intentionally as well as with the knowledge of the consequences of the act.

act, 26. Under section 300 of the Code homicidal which is not otherwise exempted under the General Exceptions, is punishable as offence of murder

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section 302 of IPC if the act falls under any one of
four main clauses of section 300. The homicidal
which is culpable in the sense that it is
because it is not exempted under any of the
Exceptions is not punishable for offence of murder
section 302, though the act falls under any one of
main clauses of section 300, if the act also attracts
falls under any one of the five exceptions mentioned
the said section. For instance homicidal act
under the first clause of section 300 i.e. when death
caused with the intention of causing death amounts
murder punishable under section 302. It will,
be punishable under section 304 if there was grave
sudden provocation because of which the offender
deprived of the power of self control as provided
Exception 1 of Section 300 or if the offender
exercise of the right of private defence of person
property exceeds that right as provided under

intentional. 2 of the said section, though the act was
the When the death is caused intentionally, because of
punishable applicability of an exception it would be
of under Clause I of section 304 of the Code. Clause II
homicidal section 304 would be applicable only if the
to act is committed with the knowledge that it is likely
death cause death but without any intention to cause
exceptions provided the act falls within one of the five
mentioned in section 300 of the Code.

bringing 27. In other words the turning point for
is the case under section 304 of IPC is not when the act
death done with the knowledge that it is likely to cause
falling as provided in the last clause of Section 299 or
it under clause fourthly of Section 300 of the Code but
exceptions is the applicability of any of the five
the enumerated in section 300 of IPC which would bring
aforesaid case under Section 304 of the Code. From the
culpable discussion it is crystal clear that the phrase

homicide is not used for bringing the case under section 304 of IPC but the said phrase can be commonly used whether the homicidal death is punishable under section 302 or under section 304 of IPC. The distinction made by the Code is not between the culpable homicide and murder as such as wrongly assumed or understood. The Code has made distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder only for the purpose of punishment. The wording used by section 300, when "culpable homicide is murder" and "when culpable homicide is not murder", also amply supports aforesaid view.

28. In this respect the use of the phrase "culpable homicide" in section 301 of IPC would also throw light on this subject which reads as follows:

301. Culpable homicide by causing death of person other than person whose death was intended -- If a person, by doing anything

to which he intends or knows to be likely
by cause death, commits culpable homicide
death causing the death of any person, whose
be he neither intends nor knows himself to
homicide likely to cause, the culpable
the committed by the offender is of
he description of which it would have been if
whose had caused the death of the person
be death he intended or knew himself to
likely to cause. (Underlining supplied)

"transferred Section 301 incorporates the doctrine of
the malice" or "transmigration of motive". Though
the heading as well as the body of section 301 uses
be phrase "culpable homicide" the offence will not
a necessarily punishable under Section 304 of IPC but in
any given case i.e. in the absence of applicability of
offence of the exceptions laid down in section 300, the
remove will be punishable under section 302 of IPC. To
one any doubt about the same, reference may be made to
the of the various judgments of the Supreme Court on
v. point. For instance in the case of Jagpal Singh

the State of Punjab reported in AIR 1991 SC 982 where
he appellant-accused had shot at Surjit Kaur even though
the had aimed at Kapur Singh it was held that under
under doctrine of transfer of malice as contemplated
offence Section 301 of IPC the accused had committed
show punishable under Section 302 of IPC. This would
"culpable that notwithstanding the use of the phrase
for homicide" in Section 301 the accused was convicted
of offence under Section 302 and not under Section 304
if IPC. It goes without saying that in the above case
were any of the exceptions referred to in Section 300
or applicable the case would be punishable under Part I
the Part II of Section 304 of IPC depending on whether
or murder was committed with the requisite intention
of knowledge. This is obvious from the latter portion
the section, "the culpable homicide is of
caused description of which it would have been if he had
knew the death of the person whose death he intended or

supplied).

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himself to be likely to cause." (Emphasis

Thus the applicability of section 302 or section 304

IPC does not depend on the use of the term 'murder'

the phrase "culpable homicide" nor does it depend

whether the offence of murder was committed

requisite intention or knowledge but in either

depends on whether any of the exceptions enumerated

section 300 of IPC is attracted.

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29. It would not be out of place to refer to

judgment of the Division Bench of this Court

by one of us (Parkar,J.) in the case of Shankar

Andher Vs. Union of India reported in 1998 ALL MR

1387 taking similar view. That was a case where a

blow was dealt with a wooden log on the head of

deceased. Rejecting the argument that it would be

offence punishable under Section 304 of IPC it

observed in paragraph 17 of the judgment as follows:

provisions

"...It is manifest from these two

of the Indian Penal Code i.e. section 299

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300 that section 299 defines only in
what is culpable homicide. Culpable
is divided into two types under section
of the Code for the purpose of
If the case falls under any one of the
four clauses of section 300 of the
Penal Code, which are virtually
repetition of the three clauses of
299 of the Code, it becomes punishable
section 302 of the Indian Penal
However, if the case is covered by any of
exceptions under section 300, the
will be punishable under section 304 of
said Code. It is only after the offence
held to fall under any one or more of
five exceptions to section 300 that the
has to find out whether culpable homicide
amounting to murder was committed with
intention as referred to in the first part
section 304 or with the knowledge that it
likely to cause death in which case it
be punishable under Part II of section 304
the Indian Penal Code. In other
unless the offence of murder falls under
of the exceptions embodied in section 300,
cannot be made punishable under section
of IPC. The requisite intention or

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is not the factor which determines the offence is punishable under Section or under section 304 of the Code. determining or the differentiating factor the applicability or otherwise of any of exceptions provided under section 300 of Penal Code. If this distinction is borne mind, we have no manner of doubt that in light of the aforesaid scheme of the Code, the offence in question cannot be to be punishable under section 304 Part II even under Part I of section 304 of Indian Penal Code as being covered clause 3 of section 299 as submitted Mr.Manudhane. According to him, appellant could only be said to have knowledge that by his act he was likely cause death and, hence, it was an under section 299 punishable under 304. In our view, the contention raised the defence counsel is the result misreading of the aforesaid provisions of Penal Code, as there is no question application of section 304 ipso facto to of the clauses of section 299 of the Code."

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30. The sum and substance of the

discussion is that the Code does not make

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between culpable homicide and murder as such as

generally assumed or understood but it only provides

different punishment depending upon whether the

of offence of murder is mitigated by attracting any

the exceptions mentioned in Section 300. If none of

exceptions are applicable culpable homicide is

murder punishable under Section 302 but if any of

exceptions are applicable it is not murder

under Section 302 but the offence is punishable

Section 304 of IPC. Section 299 of IPC only in

defines culpable homicide or murder which is

under the Code as distinct from the homicidal

which is exempted from punishment under the

Exceptions provided in Chapter IV of the Penal

Whether culpable homicide or murder will be

under Section 304 of IPC or under Section 302 of

depends on whether any of the exceptions enumerated

section 300 are applicable or not. Even if the

is committed with the requisite knowledge as laid down in clause fourthly of section 300, offence will be punishable under section 302 of IPC. The said offence will fall under Part II of section 304 only in case any one of the five exceptions enumerated in section 300 of IPC is attracted. Same principle will apply in case of culpable homicide is covered by the last clause of section 299 of IPC i.e. when the death is caused by doing an act with the knowledge that the act was likely to cause death. Conversely if the culpable homicide is committed or death is caused with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death as provided in section 299 of IPC or if the case falls under any one of the first three clauses of section 300, the offence will be punishable under section 302 of IPC unless any one of the five exceptions enumerated in section 300 is attracted in which case the offence would be punishable

under Part I of section 304 of IPC.

understood 31. If the provisions of the Code are
present as aforesaid there can be no doubt that in the
no case even if it is assumed that the accused no.1 had
in intention of causing death of Bharat, and his act
it assaulting Bharat was done with the knowledge that
cause was likely to cause death or his act was done to
would such bodily injury as is likely to cause death, it
none fall under clause fourthly of section 300 and since
attracted of the exceptions enumerated in section 300 is
is the culpable homicide committed by accused no.1
which murder punishable under section 302 of IPC
to provides punishment for culpable homicide amounting
provides murder and not under section 304 which
to punishment for culpable homicide not amounting
no.1 murder. In the absence of the act of accused
under falling under any of the exceptions enumerated
in section 300 of IPC, the trial Court had clearly erred
law in awarding punishment under Part II of section

304

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of IPC. Neither the defence has endeavoured to
the homicidal act of accused no.1 under any of
exceptions enumerated under section 300 of IPC nor
trial Court has attempted to do so, nor can
contemplate any exception under which the act of
no.1 can be said to fall. The obvious result is
the conviction of accused no.1 will have to be
to offence punishable under section 302 of IPC.

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32. In this case, as referred to earlier,
the words uttered by accused no.1 that Bharat should
be left alive and the fact that the assault was
with iron bar on the vital part of the body like
with such force which caused haematoma under scalp
temporal, parietal as well as on occipital region
and fracture of left ulna resulting in haemorrhage
to compression of the brain, the obvious intention
to commit murder contemplated under the first clause
section 300. In any event the accused no.1 had

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death of Bharat by an act done with the intention causing such bodily injury which he knew to be likely cause death of Bharat falling under clause secondly section 300. When the act was done by accused no.1 the intention of causing such bodily injury to which was sufficient in the ordinary course of nature cause death it would fall under clause thirdly section 300. In the absence of applicability of any the exceptions enumerated under section 300 the no.1 could only be punished under section 302 of IPC not under section 304 of IPC.

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33. In this connection reference may be made the couple of recent decisions of the Supreme cited on behalf of the State. In the case of Suraj v. State of Haryana reported in 2003 ALL.MR (Cri) (S.C.) where the accused had dealt a lathi blow on left parietal side of head of the deceased consequent which the deceased died it was held that intention

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kill was present and conviction under section 302 justified. In that case there was solitary fatal given on the head of the deceased and the Doctor opined that injury was caused in such a manner as cause death of the deceased causing fracture of parietal bone causing extra dural haematoma. It held that the appellant must be attributed the that when he used a lathi forcefully on the head of person, he was likely to cause death of the said and the prosecution had also proved that the accused intention to kill the deceased.

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34. In the case of Hari Singh v. State Rajasthan reported in AIR 1997 SC 1505 where the had given lathi blow on the head of the resulting in fracture of skull of the deceased and internal injuries received in his brain were themselves sufficient in the ordinary course of to cause death, it was held that the accused was

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convicted for offence punishable under section 302

IPC. The ratio of the aforesaid two judgments of

Supreme Court is squarely applicable to the

case. We, therefore, have no hesitation in holding

the accused no.1 is liable to be convicted for

under section 302 of IPC and not under section 304

IPC as wrongly held by the trial Court.

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35. In the result, Criminal Appeal No.255 of

abates so far as appellant no.2-original accused no.2

concerned as he is reported to be dead. So far

accused no.1-Pralhad Krishnat Patil is concerned,

order of conviction and sentence recorded by the

Sessions Judge, Solapur in Sessions Case No.108 of

under Section 341 read with section 34 of IPC

confirmed. As regards the order of conviction

sentence of accused no.1 under section 304 Part II

with section 34 of IPC is concerned, the same is

by virtue of the State Appeal being Criminal

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Appeal

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No.531 of 1988, and he is convicted for offence
section 302 of IPC and sentenced to RI for life and
pay a fine of Rs.3000/- in default to suffer
R.I. for one year. The substantive sentences shall
concurrently. Accused no.1-Pralhad Krishnat Patil
directed to surrender to his bail bond within four
from today. The order of acquittal of the rest of
respondents-accused for various offences is
Their bail bonds shall stand cancelled. Criminal
no.531 of 1988 is thus partly allowed and
Appeal No.255 of 1988 is disposed of accordingly.

(S.S.PARKAR,J.)

(SMT. RANJANA DESAI,J.)